

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

DAVID SIDOO, *et al.*,

Defendants.

Case No. 19-CR-10080-NMG

ORAL ARGUMENT REQUESTED

**DEFENDANTS' MOTION TO DISMISS COUNT ONE
INsofar AS IT ALLEGES CONSPIRACY TO DEFRAUD TESTING COMPANIES
OF PROPERTY AND HONEST SERVICES**

Defendants William McGlashan, Elizabeth Kimmel, Mossimo Giannulli, Lori Loughlin, Diane Blake, Todd Blake, Gamal Abdelaziz, I-Hsin "Joey" Chen, Amy Colburn, Gregory Colburn, Marci Palatella, Robert Zangrillo, Homayoun Zadeh, and John Wilson (collectively, the "Defendants") hereby move to dismiss Count One of the Fourth Superseding Indictment ("FSI") insofar as it alleges a conspiracy to defraud college admissions testing companies of property and honest services.

As grounds for this motion, the Defendants state that the FSI fails to allege a conspiracy to defraud testing companies, ACT, Inc. and the College Board, of any cognizable property or honest services under federal law. Test scores, as a matter of law, cannot constitute "money or property" for purposes of the mail and wire fraud statutes and the FSI fails to allege a conspiracy to defraud testing companies of any item that could constitute "money or property" under those statutes. Further, the FSI fails to allege any facts establishing that any individual allegedly bribed by the Defendants owed a fiduciary duty to the testing companies, which is an essential element of the theft of honest services. The reasons for this motion are set forth more fully in the Defendants' memorandum in support of this motion which is filed simultaneously herewith and incorporated

fully herein.

WHEREFORE, for the reasons stated in this motion and in its accompanying memorandum in support, the Defendants respectfully request that this Court dismiss Count One of the FSI insofar as it alleges conspiracy to defraud testing companies of property and honest services.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), the Defendants hereby respectfully request that the Court hear oral argument on this motion, as they believe it will assist the Court in its consideration of this motion.

Dated: April 1, 2020

Respectfully submitted,

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RULE 7.1 AND 116.3(f) CERTIFICATION

I hereby certify that I conferred with Eric Rosen, counsel for the Government, on March 30, 2020 regarding this motion, and Rosen, on behalf of the government, stated that he opposes the motion.

/s/ Jack W. Pirozzolo
Jack W. Pirozzolo

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2020, I filed this document through the CM/ECF system and a copy will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Jack W. Pirozzolo
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